

AGREEMENT BETWEEN OWNER AND CONSULTANT

This AGREEMENT is made this _____ day of _____, 20____,

BETWEEN the Division of Facilities Construction and Management, hereinafter referred to as "Owner", and the "Consultant" _____
a _____, duly qualified to conduct business in the State of Utah, whose
address is _____,
agree to all the provisions of this Agreement for the Project identified as

ARTICLE I. DOCUMENTS

A. GENERAL CONDITIONS, DESIGN CRITERIA, CAD

1. This Agreement includes all the documents and provisions set forth herein, including those incorporated by reference.
2. The Consultant and Owner shall be bound by their respective obligations, duties and rights as referred to in the "General Conditions" which is current as of the date of this Agreement and on file with the Division of Facilities Construction and Management and by this reference incorporated herein. It is intended that this Consultant's Agreement not reiterate the applicable provisions of said General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated. If the Consultant does not have a copy of said General Conditions, the Consultant shall obtain such copy from the Division of Facilities Construction and Management. Without discounting the need for the Consultant to be familiar with all of the General Conditions, Article 4 of the General Conditions provides the requirements for the Administration of the Contract and describes many responsibilities and obligations of the Consultant, as defined in the General Conditions, that are incorporated by reference into this Consultant's Agreement. Unless the context provides otherwise, all definitions and interpretations of provisions of this Consultant's

Agreement shall be as stated in said General Conditions. In case of conflict between the provisions of this Consultant's Agreement and the General Conditions, the provisions of this Consultant's Agreement shall control. The Consultant shall become familiar with and comply with the bidding documents. The bid forms will be provided to Consultant by the Owner.

3. The "DFCM Design Criteria" and the "DFCM Cad Criteria", which is a supplement to the National Cad Standard, and which are current as of the date of this Agreement, on file with the Division of Facilities Construction and Management and by this reference incorporated herein, a copy of which will be provided to the Consultant upon request, shall be reviewed by the Consultant and shall be used to define and/or supplement any terms or responsibilities under this Consultant's Agreement. In case of conflict, the following documents supercede each other in accordance with the following respective hierarchy: Codes and applicable law, the attachments hereto, any provisions of the solicitation documents which were issued by the Owner, any portion(s) of the response to the Owner's solicitation which is attached hereto as Attachment "B" and by this reference incorporated herein, the body of this Agreement, the DFCM Cad Criteria, the DFCM General Conditions, the DFCM Design Criteria.

B. GENERAL REQUIREMENTS

1. The objectives of the Work under this Agreement includes, but is not limited to the following: comply with the requirements of the Predesign Program, provide designs that comply with applicable laws, codes, rules, regulations and quality requirements, to not exceed the established Construction Budget, to maintain Project Schedule, and to work with the Owner and Contractor in such a professional manner as to provide accomplishment of all these objectives.
2. The schedule requirements are as follows: Time is of the essence. The Consultant shall commence and prosecute the work diligently so as to be in compliance with the Project Schedule (Attachment "A") attached hereto and incorporated herein provided, however, the Consultant shall not be responsible for failure to comply with the Project Schedule or any portion thereof to the extent such noncompliance is not due to the fault of the Consultant.
3. Authority to Commence Work. Until such time as this Agreement has been fully executed, Consultant is neither obligated nor authorized to commence work under this Agreement and under no circumstance shall any compensation be due Consultant from Owner.
4. Good Faith. Any approval, action, activity, decision and/or recommendation by the Consultant or Owner shall be made in good faith.

C. PROJECT TEAM

1. The Owner's Designated Representative is the person assigned by the Director of DFCM to manage the Project and is the sole person authorized to act on behalf of the Owner. The Owner's Designated Representative shall timely render decision on behalf of the Owner to avoid unreasonable delays in the orderly progress of the Project.
2. The Consultant and subconsultants have been selected to perform the services of this Agreement because of the skills and expertise of designated key personnel.
3. During the selection process of Consultant for this Project, conducted by Owner, Consultant provided an organization chart including the key members of the Consultant and a listing of the subconsultants. These key members and the listed subconsultants cannot be changed without advance written approval by the Owner. The Consultant's Designated Representative identified in the organization chart is and shall be authorized to act on the Consultant's behalf and bind the Consultant in regard to the Project.

ARTICLE II. RESPONSIBILITIES OF THE PARTIES

A. OWNER RESPONSIBILITIES

1. Unless otherwise expressly agreed herein, the Owner shall at its sole cost and expense:
 - a. place advertisements for bids or proposals;
 - b. conduct bid or proposal openings and interviews;
 - c. timely provide and update Consultant with available "public" information in Owner's possession regarding the Project, including but not limited to, legal descriptions, topographic surveys, ALTA or other boundary surveys, utility surveys, record drawings, reports, project objectives, budgets, and other material requirements and limitations.
 - d. Notify Consultant of any known fault, known defect, or known deficiency in the Project, including but not limited to acts, errors, omissions, or inconsistencies in Consultant's services and Deliverable Instruments of Service. Notwithstanding this provision, any failure to notify the Consultant, shall not relieve the Consultant of any responsibility or liability for such fault, defect or deficiency.
2. The Owner may conduct an evaluation of the Consultant's services, including specific personnel of Consultant or any subconsultant at any time.

B. SCOPE OF CONSULTANT'S BASIC SERVICES

1. IN GENERAL. The Consultant's Basic Services consist of those described in Paragraphs B. 2 through 6 below and any other services identified in this Agreement as part of Basic Services, and include normal structural, mechanical, electrical, and architectural as well as other consulting services reasonably necessary to fulfill the Consultant's duties under this Agreement. Any additional scope of service requirements are provided in Attachment "A" to this Agreement.
 - a. Incidental Services. Consultant shall provide all services incidental to said identified services as established by standard professional custom and practice.
 - b. Direction from Owner's Designated Representative only. Consultant has neither the responsibility nor the authority to accept directives or determinations from any person other than the Owner's designated representative. The Consultant shall not take any direction from the User's, Contractor's or any other third party's representative.
 - c. The Consultant shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be on a form provided by or approved by the Owner and shall include a detailed written statement that indicates the specific Drawings and/or Specifications in need of clarification and the nature of the clarification requested. At no additional cost to and if deemed appropriate by the Owner, the Consultant shall prepare, reproduce, and distribute supplemental and/or corrected Drawings and/or Specifications in response to requests for information by the Contractor.
2. SCHEMATIC DESIGN PHASE.
 - a. WRITTEN PROGRAM. The Consultant shall review the program or other "statement of scope" furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner. The term "program" as referred to in this Agreement shall be deemed to include any "statement of scope" provided by Owner.
 - b. PRELIMINARY EVALUATION. The Consultant shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.
 - c. ALTERNATIVE APPROACHES. The Consultant shall review with the Owner alternative approaches to design and construction of the Project.

- d. SCHEMATIC DESIGN DOCUMENTS. Based on the mutually agreed upon program, or scope of work, schedule and construction budget requirements, the Consultant shall prepare, for written approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design Documents shall comply with the DFCM Design Criteria incorporated by reference into this Agreement.
- e. LAND USE APPROVAL ASSISTANCE. The Consultant shall cooperate with the Owner in connection with obtaining appropriate and necessary zoning and land use approvals, including variances, so as to allow for development and construction of the Project. However, appearances as an expert as well as the preparation of necessary drawings, visual aids and any other design work solely prepared for an appearance with zoning boards or planning commissions or other governmental meetings or hearings, shall be considered as Additional Services, if not included in Attachment "A" to this Agreement.

3. DESIGN DEVELOPMENT PHASE.

- a. DESIGN DEVELOPMENT DOCUMENTS. Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, or scope of work, schedule or construction budget, and only after written authorization is provided to the Consultant by the Owner, the Consultant shall prepare, for written approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Design Development Documents shall comply with the DFCM Design Criteria incorporated by reference into this Agreement.

4. CONSTRUCTION (CONTRACT) DOCUMENTS PHASE.

- a. CONSTRUCTION DOCUMENTS. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner and only after written authorization is provided to the Consultant by the Owner, the Consultant shall prepare, for approval by the Owner, Contract Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Contract Documents shall comply with the DFCM Design Criteria incorporated by reference into this Agreement. The Construction Documents shall comply with and identify all applicable codes, tests and inspections.

- b. ASSISTANCE. The Consultant shall assist the Owner in the preparation of the necessary bidding information and bidding forms.
- c. ADJUSTMENTS ADVISEMENT. The Consultant shall advise the Owner of any adjustments to previous preliminary estimates of Construction cost indicated by changes in requirements or general market conditions.
- d. ASSIST WITH FILING FOR GOVERNMENTAL APPROVAL. When requested by the Owner, the Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

5. BIDDING OR NEGOTIATION PHASE.

- a. ASSISTANCE TO OWNER. The Consultant, following the Owner's approval of the Construction Documents and of the latest Cost Estimate and only after written authorization is provided to Consultant by the Owner, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding contracts for construction.
- b. DUTIES; IN GENERAL.
 - (1) The Consultant shall disperse from the Consultant's place of business, upon receiving any required deposit, all bidding documents to contractors, plan rooms, and other appropriate facilities as designated by Owner. All other requirements regarding the bidding documents are provided in Attachment "A" to this Agreement.
 - (2) The Consultant shall attend any pre-bid conference as requested by the Owner. DFCM shall control all advertising, bid openings, publishing of bid results, awarding of the Contract, with the location of bid openings at the option of DFCM.
 - (3) The Consultant shall at all reasonable times be available personally, or have available, a responsible member of his or her staff to make such interpretations of the Construction Documents as are necessary to facilitate completion of the construction contract.

6. CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT.

- a. COMMENCEMENT AND TERMINATION. The Consultant's responsibility to provide Basic Services for the Construction Phase

under this Agreement commences with the award of the Contract for Construction and the Owner's written authorization to proceed on to this Phase and terminates upon the Owner's execution of the final Certificate for Payment unless extended by written agreement of the Consultant and Owner.

- b. **CONSTRUCTION PHASE DUTIES, RESPONSIBILITIES AND LIMITATIONS.** Construction Phase Duties, responsibilities and limitations of authority of the Consultant shall not be restricted, modified or extended without written agreement of the Owner and Consultant.
- c. **REPRESENTATIVE.** The Consultant shall be a representative of and shall advise and consult with the Owner (1) during the Construction Phase, and (2) during period of the Contractor's warranty obligations under the Contract Documents. During the Warranty Phase the Consultant shall make a qualified representative available to answer questions and to perform a 1-year warranty walk through. The Consultant shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified in writing by the Owner and Consultant. The Consultant shall be liable for any representations made by the Consultant or anyone for whose acts the Consultant may be liable, not consistent with the provisions of the Construction Documents, unless the Owner has given written approval in advance.
- d. **SITE VISITS.**
 - (1) **IN GENERAL.** The Consultant shall visit the site weekly or at intervals appropriate to the stage of construction to become familiar in general with the progress and quality of the Work completed and to determine if the Work is proceeding in general accordance with the requirements and the overall design concept of the Construction Documents.
 - (2) **WRITTEN REPORT.** The Consultant shall promptly submit to the Owner a written report subsequent to each site visit.
 - (3) **LIMITATION.** The Consultant shall not be required to make exhaustive or continuous on-site inspections or observations to check the quality or quantity of the Work unless specified elsewhere in this Agreement.
- e. **SUBMITTALS**
 - (1) The Consultant shall review and take appropriate action upon the Contractor's submittals such as Shop Drawings, Product

Data, and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with reasonable promptness, or as otherwise agreed by the Owner and the Consultant in Article A9, as to cause no delay in the Work or in the Activities of the Owner, Contractor, and/or separate contractors. The Consultant's review shall not constitute approval of safety precautions and/or of any construction means, methods, techniques, sequences, or procedures. The Consultant's review of a specific item shall not indicate approval of an assembly of which the item is a component.

- (2) The Consultant shall maintain a record of submittals and copies of submittals supplied by the Contractor.
- (3) The Consultant shall specify appropriate performance and design criteria where professional design services or certifications by a design professional related to systems, materials, and/or equipment are specifically required of the Contractor by the Contract Documents. Drawing and other submittals related to the Work designed and/or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and/or approvals performed by such design professionals.

- f. MODIFICATIONS. The Consultant shall prepare Change Orders, or Construction Change Directives, with supporting documentation and data for the Owner's approval and execution in accordance with the Contract Documents, and may issue Field Orders not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. When approved by the Owner, the Consultant shall prepare Statements of Justification, detailed cost and time estimates of the proposed change in the work, Requests for Proposals, Construction Change Directives, and Change Orders. The Consultant shall prepare, reproduce, and distribute Drawings and Specifications to completely describe Work to be added, deleted, and/or modified. The preparation of all such documentation shall not be considered additional services unless the change in the Work is determined by the Owner to be a scope change and/or an unknown condition.
- g. RECORD DRAWINGS (AS-BUILTS). At the conclusion of the Construction Phase, the Consultant shall update the construction

documents based upon information furnished by the Contractor, and provide the Owner with a complete set of Record Documents. The set shall include:

- 1 Compact Disc (CD) containing a complete set of drawings in CAD format (*.dwg or *.dgn files);
- 1 CD containing a complete set of drawings created from the CAD files in PDF file format;
- 1 complete paper/mylar set of drawings created from the PDF files;
- 1 CD containing an updated Project Manual/Specification Manual in Word or Wordperfect file format;
- 1 CD containing an updated Project Manual/Specification Manual created from the Word/Wordperfect files in PDF file format; and
- 1 complete paper set of the Project Manual/Specification Manual created from the PDF files.

Record drawings are based solely on information provided by the Contractor. If the Consultant has reason to believe that information is incorrect, the Consultant shall promptly advise the Owner.

7. **Standard of Care; Responsibility.** Consultant shall exercise the degree of skill and diligence as exercised by members of the Consultant's profession having substantial experience on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The Consultant shall be liable to the Owner for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against the Owner), to the extent caused by errors or omissions that do not meet this standard of care.
8. **Review Process.** Consultant shall comply with any review process required by the Owner. The Consultant shall make submissions to the reviewing entity in a timely manner so as not to delay the reviewing entity.
9. **Independent Contractor.** The Consultant is an independent contractor and not an employee of the Owner. The Consultant shall have no authorization, express or implied, to bind the State of Utah or the Division of Facilities Construction and Management to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or Owner, except as specifically set forth in this Agreement.
10. **Public Information Release.** The Consultant shall not make any public information release in connection with the Project without advance written permission of the Owner. The Consultant shall require of the Consultant's subconsultants the same agreement to maintain the confidentiality of information. Notwithstanding this provision, the Consultant does not need the Owner's consent to respond to any information release which is needed to defend the Consultant's interest, or to the extent such public information release is protected by constitutional free speech rights.

11. Conflict of Interest. Consultant and Subconsultant(s) shall not have any member that has a conflict of interest that may reasonably affect the Consultant or Subconsultant's professional judgment in regard to the Project, unless such conflict is disclosed to the Owner and approved by the Owner in writing. It is the Consultant's duty to enforce this provision with the Subconsultant(s).
12. Laws, Codes and Regulations. The Consultant shall review all applicable laws, codes, rules, regulations and quality requirements, applicable to the Consultant's services. The Consultant shall in the design of the Project meet all of the requirements imposed by governmental authorities having jurisdiction over the Project. In the case of change(s) or conflicts in the applicable code requirements, laws, rules or regulations, during the work of the Scope of Consultant's Services, when and if the Consultant becomes aware of such change(s) or conflicts, the Consultant shall promptly notify the Owner in writing. If the Owner determines that work that has already been properly performed must now be changed, such change will be considered additional work under this Agreement and the Consultant shall then prepare all documents to comply with the needed change(s).
13. Establish Construction Budget. The Consultant shall maintain a cost control process and complete all design and contract document phases such that the construction cost as identified by the Contractor's bid or proposal and set forth in the initial Owner-Contractor Agreement shall not exceed the Construction Budget. If no acceptable bid is received within the Construction Budget, the Owner in its sole discretion may elect any one or more of the following options:
 - a. Give written approval of an increase in the Construction Budget; and/or
 - b. Rebid or renegotiate the construction contract within a reasonable time; and/or
 - c. Revise the Project scope and/or quality as necessary to meet the Construction Budget; and/or
 - d. Abandon the Project and terminate this Agreement.

If the Owner elects an option or options which does not abandon the Project, the Consultant shall perform the Consultant's services to implement the selected option or options at no additional charge to the Owner.

If the Owner determines that there is available time, based upon the need for delivery of the project, which determination shall not be unreasonably withheld, the Owner shall provide the Consultant a reasonable opportunity to

revise the design at its own expense in order to cure any deficiency. If the Owner elects to abandon the Project designed by the Consultant and terminate this Agreement, the Consultant shall only be entitled to, as a maximum, compensation for design work approved in writing by the Owner and performed in accordance with this Agreement up to the date of termination.

14. **Specific Delay Requirements.** The Consultant shall be liable to the Owner for damages incurred to the Owner as a result of impact on the critical path schedule to the extent due to Consultant's error, act or omission.
15. **Notification.** The Consultant shall promptly notify Owner in writing of facts, events or circumstances of which the Consultant is or should be aware and which have or likely will adversely impact the critical path schedule.
16. **Staffing.** The Consultant shall maintain the human, physical and other resources reasonably necessary to timely meet its obligations under this Agreement.
17. **Owner Reviews, Limitations.** The right of the Owner to review and comment upon the work of the Consultant, as well as any approval by the Owner, shall not be construed as relieving the Consultant from its professional and legal responsibility for services required under this Agreement. No review by the Owner, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the Owner of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain liable to the Owner in accordance with applicable law for all damages to the Owner caused by the Consultant's acts, errors and/or omissions.
18. **Energy Requirements.** Consultant shall comply with the energy requirements as stated in the Owner's solicitation documents. The listing of the energy requirements herein does not limit the need of Consultant to comply with all applicable laws, codes, rules and regulations.
19. **Source of Specifications Identified.** If Consultant incorporates any proprietary specifications or any proprietary portion of its work from a source other than Consultant, then such original source must be clearly identified in the Consultant's work in order for Owner to be aware of its identity and to be able to accept or reject such use of said proprietary source. Only those items specifically approved for "sole source" by the Director of the Division of Facilities Construction and Management may be used as a "sole source" specification. In all specifications, the provisions of Utah Code, Title 63, Chapter 56, the Utah Procurement Code, and all applicable rules enacted pursuant thereto, must be fully complied with by Consultant.

Use of Prototypical Designs or Designs Provided by Owner. Consultant shall use prototypical designs or other design drawings, specifications or calculations provided by Owner in the request for proposal. Consultant shall recheck such designs and any other design data, drawings, specifications and calculations provided by Owner. Consultant shall correct any error or omission as deemed necessary thereafter, and shall be responsible therefore to the same extent as if such materials had been provided by Consultant under this Agreement. Consultant shall be provided with all change orders, proposed change orders, and clarifications, from previous projects that are applicable to this Project. Consultant shall incorporate all pertinent material into the new plans and specifications. If Consultant has provided design services to Owner on previous projects and has designed buildings similar to the components of this Project, which are in Consultant's charge, at the direction of Owner, Consultant shall modify and reuse existing design as much as possible. Where existing designs are being reused, drawings are required to conform to Owner graphic standards unless prior written approval is given by Owner.

20. Subconsultants. The Consultant shall be responsible and liable to the Owner for the subconsultants services. Consultant shall, without additional expense to the Owner, be responsible for obtaining any business and professional licenses and permits and for complying with any applicable Federal, State, and local laws, codes, and regulations, as necessary for the performance of the Consultant's services.

ARTICLE III. TERMS AND CONDITIONS

A. Deliverable Instruments of Service. "Deliverable Instruments of Service" as used in this Agreement shall mean the drawings, specifications, calculations, manuals, reports, official project meeting minutes, project observation reports and/or other information, regardless of medium, identified in and required to be delivered or submitted to the Owner under this Agreement.

1. Ownership. It is acknowledged and agreed that all documents developed pursuant to this Agreement are Instruments of Service. Deliverable Instruments of Service are the sole property of Owner. Owner shall have unlimited rights, for the benefit of Owner, in all said deliverable instruments of service, including, but not limited to use, re-use, modification, and transferability for reference only related to the site.
2. License. Consultant hereby grants Owner a nonexclusive license for governmental purposes to any copyrighted portion of Deliverable Instruments of Service. Such license shall include, but not be limited to, the right to use and reuse such copyrighted materials to construct the buildings, facilities, or other matters covered by such copyrighted materials for additional use and to license such copyrighted materials for reuse. The Owner's rights and

licenses in and to said Deliverable Instruments of Service are conditioned upon Consultant receiving all sums related to the Owner approved deliverables due under this Agreement.

3. Indemnification. Owner's use on other projects, Owner's re-use, or Owner's modification of the Deliverable Instruments of Service shall be at Owner's sole risk and without recourse against Consultant, its subconsultants at any tier, and their principals, agents and employees. Owner shall hold harmless, indemnify and defend Consultant, its subconsultants at any tier and their respective principals, agents and employees from and against any and all actions, claims, loss, or damages of any nature whatsoever to the extent related to and resulting from any said use, re-use, or modification of all or any portion of the Deliverable Instruments of Service by or on behalf of Owner, or under any license issued by, through, or on behalf of Owner, irrespective of any actual or alleged fault on the part of the indemnitee(s). Under no circumstances shall Consultant be indemnified for the use of the Deliverable Instruments of Service for the Project that is the subject of this Agreement.
4. Access. Consultant, for a period of three (3) years after completion of the Project, agrees to furnish and to provide access to all the aforesaid Deliverable Instruments of Service upon the request of Owner. Owner shall pay all costs for labor, reproduction and/or shipping of requested documents. Owner agrees to make no demand on Consultant for responsibility for Owner use of such material for any other Owner work which is not the subject of an Agreement between Owner and the Consultant for such use.
5. Stamp. If the Consultant is not the same consultant commissioned for the reuse or modification, prior to reusing or modifying the Deliverable Instruments of Services, Owner shall reasonably remove all indications of authorship, including the title blocks, names, initials, signatures, and professional stamps of Consultant, its subconsultants at any tier, and their agents and employees.

B. CLAIMS AND DISPUTES. House Bill 217 of the 2004 Utah Legislative Session enacts provisions regarding claims and disputes as well as requires administrative rules to be enacted. The parties to this Agreement agree to abide by the terms of House Bill 217 and any administrative rules adopted pursuant thereto to the extent such relates to claims or disputes under this Agreement.

1. Any and all claims by or disputes between the parties arising out of or related to this Agreement, the parties' performance hereunder, or the parties' relationship as created by this Agreement, shall be processed in accordance with the following protocol.
2. A claim or dispute is defined as any situation wherein the Owner or Consultant seeks to recover, levy, or assess damages, costs, penalties, additional compensation, or other monetary or affirmative relief from or

against the other party. The party seeking such relief shall serve a written Notice of Claim upon the other party as herein required within thirty (30) days of the date that the claimant is aware of, or should have been aware of, such claim. The Notice of Claim shall set forth in reasonable detail the nature of and basis for the claim and the nature and amount, if applicable, of the damages or other relief sought. The party receiving a Notice of Claim shall, within thirty (30) days of receipt of said Notice, serve upon the other party as herein required a written Notice of Counterclaim, if any, setting forth in reasonable detail the nature of and basis for the claim and the nature and amount, if applicable, of the damages or other relief sought.

3. The Claim shall be submitted to the Owner Representative which shall be deemed as being submitted to the Director of the Division of Facilities Construction and Management (the "Director") for decision. The Director or his/her designee shall, within sixty (60) days of said submission, conduct an informal de novo hearing with the parties on the claim and, within thirty (30) days of the close of said hearing, issue a written decision on the claim. If the Director does not timely conduct an informal hearing or timely issue a decision on the claim, the claim shall be deemed as having been submitted to mediation as hereinafter described. If the Director timely conducts an informal de novo hearing with the parties and issues a written decision on the claim and either party rejects the decision, that party shall within thirty (30) days of receipt of said decision notify the Owner Representative in writing as herein required of said rejection, upon which the claim shall be deemed as having been submitted to mediation as hereinafter described. Failure to give such notice of rejection constitutes acceptance of the Director's decision.

In lieu of conducting an informal de novo hearing on the claim, the Director may refer the claim to a neutral, expert panel, which referral shall be made within fourteen (14) days of the date the claim was submitted to the Director for decision. The panel shall include a design professional licensed in Utah and an attorney licensed in Utah having substantial experience in design and construction issues. The panel shall, within sixty (60) days of receipt of the claim from the Director, recommend in writing a decision on the claim to the Director. The Director shall, within fourteen (14) days of receiving said recommendation, issue a written decision on the claim. If either party rejects the decision, that party shall within thirty (30) days notify the Owner Representative in writing as herein required of said rejection, upon which the claim shall be submitted to mediation as hereinafter described. Failure to give such notice of rejection constitutes acceptance of the Director's decision. If the Director does not timely issue a decision as contemplated, the claim shall be submitted to mediation as hereinafter described.

4. The Owner Representative, the Director or his/her designee, or the neutral, expert panel, as applicable, may conduct such investigation as is reasonably necessary to an informed decision or recommendation and the parties shall reasonably cooperate in any such investigation. Said investigation and the parties' cooperation therein constitute compromise negotiations under Rule 408, Utah Rules of Evidence.

5. Claims not resolved as hereinabove described and any and all other claims or disputes arising out of or related to this Agreement, the parties' performance hereunder, or the parties' relationship as created by this Agreement, shall be submitted to mediation prior to initiation of litigation. Mediation of any such other claim or dispute may be demanded by either party at any time upon written notice to the other party as herein provided. In furtherance of this agreement to mediate, the parties shall: (i) select a mutually-acceptable mediator; (ii) exchange discoverable documents which either reasonably believes to be relevant and material to the issue(s) in dispute and necessary to an effective mediation; (iii) engage and cooperate in such further discovery as they may agree or which the mediator suggests may be necessary to facilitate an effective mediation; (iv) exchange written position papers which state their position in the dispute and outline the subject matter and substance of the anticipated testimony of individuals having personal knowledge of the facts underlying the dispute, and; (v) mediate in good faith. In the event the parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. Witness expenses shall be borne by the party producing the witness. Mediator fees and expenses, reasonable attorney fees, filing fees, administration fees and expenses, and deposits, if any, shall be paid equally by the parties. The mediator shall have the same immunity as is available to federal district court judges.
6. The prevailing party shall be entitled to reasonable attorney fees.
7. Unless otherwise provided, this Agreement shall be governed by the laws of the State of Utah. Salt Lake County, State of Utah, shall be the venue of any legal proceeding regarding the terms or enforcement of this Agreement.
8. Any time limit described herein may be extended by written agreement by the Consultant and the Owner.

C. INSURANCE

1. To protect against liability, loss and/or expense arising in connection with the performance of services described under this Consultant's Agreement, the Consultant shall obtain and maintain in force during the entire period of this Consultant's Agreement without interruption, at its own expense, insurance from insurance companies authorized to do business in the State of Utah, in a form and content satisfactory to the Owner, and rated "A" or better with a financial size category of (a) Class X or larger where the applicable Construction Budget is \$1,000,000 or greater; or (b) Class VII or larger where the applicable Construction Budget is under \$1,000,000. All said ratings and financial size categories shall be as published by A.M. Best Company at the time this Consultant's Agreement is executed. All the following listed insurance shall be provided by the Consultant:

- a. Consultant's Professional Liability Insurance. The Consultant shall maintain a policy on a claims made basis, annual aggregate policy limit based on the following chart, unless modified in Attachment "A" to this Agreement:

Construction Budget	Minimum Liability Coverage
\$100,000,000 and above	\$10,000,000
\$50,000,000 and above, but under \$100,000,000	\$5,000,000
\$25,000,000 and above, but under \$50,000,000	\$2,000,000
\$5,000,000 and above, but under \$25,000,000	\$1,000,000
\$1,500,000 and above, but under \$5,000,000	\$500,000
\$250,000 and above, but under \$1,500,000	\$250,000

The Owner reserves the right to require additional coverage from that stated in the chart herein above, at the Owner's expense for the additional coverage portion only. Owner also reserves the right to require project specific insurance, and if such right has been exercised it shall be indicated as an exhibit to this Agreement. Unless project specific insurance is required by the Owner, the coverage may be written under a practice policy with limits applicable to all projects undertaken by the firm but must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the Consultant under this Agreement. All policies provided by the Consultant must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of the Consultant's Agreement or the commencement of the Consultant's services. The Consultant's policy must also include contractual liability coverage applicable to the indemnity provision of this Agreement for those portions of the indemnity provisions that are insured under the Consultant's policy and in accordance with this Agreement, including the attachments hereto.

- b. Commercial General Liability Insurance. Consultant shall provide, at their own expense, Commercial General Liability Insurance, on an "occurrence basis", including insurance for premises and operations, independent Contractors, projects/completed operations, and contractual liability coverage. Such Commercial General Liability Insurance must provide coverage for explosion, collapse and underground hazards. Said certificate shall state that the policy required by this paragraph has been endorsed to name the State of Utah and DFCM as Additional Insureds. Insurance required by this paragraph shall provide for limits that are not less than the following:

\$2,000,000	General Aggregate
\$2,000,000	Products-Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence
\$ 50,000	Fire Damage (any one fire)
\$ 5,000	Medical Expense (any one person)

- c. Workers' Compensation Insurance and Employers' Liability Insurance. Worker's Compensation Insurance shall cover full liability under the Worker's Compensation Laws of the jurisdiction in which the Project is located at the statutory limits required by said jurisdiction's laws. Employer's Liability Insurance shall provide the following limits of liability: \$100,000 for each accident; \$500,000 for Disease-Policy Limit; and \$100,000 for Disease-Each Employee.
- d. Comprehensive Automobile Liability Insurance including coverage for all owned, hired and non-owned automobiles with limits not less than \$1,000,000 combined single limit per occurrence.
- e. Valuable papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage. The Consultant and all subconsultants of the Consultant shall provide coverage for the physical loss of or destruction to their work product including drawings, specifications and electronic data and media.
- f. Aircraft Use. Consultant using its own aircraft, or employing aircraft in connection with the work performed under this Agreement shall maintain Aircraft Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence. Said certificate shall state that the policy required by this paragraph has been endorsed to name the State of Utah and DFCM as Additional Insureds.
- g. The Consultant shall submit certificates in form and substance satisfactory to the Owner as evidence of the insurance requirements of this Article. Such certificates shall assure that the Owner has thirty (30) days notice prior to the cancellation for reasons other than nonpayment of premium or non-renewal of the applicable coverage, and ten (10) days notice prior to cancellation for nonpayment of premium. The Consultant shall notify the Owner within thirty (30) days of any claim(s) against the Consultant which singly or in the aggregate exceed 20% of the applicable required insured limits and the Consultant shall, if requested by Owner, use its best efforts to reinstate the policy within the original limits and at a reasonable cost. The State of Utah shall be named as an insured party, as primary coverage and not contributing, on all the insurance policies required by this Article except the professional liability and workers' compensation policies. The Owner reserves the right to request the Consultant to provide a loss report from its insurance carrier.
- h. The Consultant agrees to maintain all insurance required under this Agreement during the required term. If the Consultant fails to furnish and maintain said required insurance, the Owner may purchase such insurance on behalf of the Consultant, and the Consultant shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

- i. All policies, except Practice Professional Liability Insurance, required shall be endorsed to include waivers of subrogation in favor of the Owner.
- j. Any type of insurance or any increase of limits of liability not described in this Agreement which the Consultant requires for its own protection or on account of any statute, rule or regulation, shall be its own responsibility and at its own expense.
- k. The carrying of any insurance required by this Agreement shall in no way be interpreted as relieving the Consultant of any other responsibility or liability under this Agreement or any applicable law, statute, rule, regulation or order.
- l. Consultant shall not violate or knowingly permit to be violated any of the provision of the policies on insurance required under this Agreement.

D. INDEMNIFICATION

1. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the State of Utah, its institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, authorized volunteers (hereinafter the above listing of entities and persons is referred to as "indemnities") from and against every kind and character of claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, to the extent caused by any negligent or wrongful act, error or omission of the Consultant, its subconsultants at any tier, or any of their agents, employees, or other persons or entities for whose acts the Consultant or subconsultants at any tier may be liable. The Consultant shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the State of Utah shall have the right, at its option and its own expense, to participate in the defense of any such action without relieving the Consultant of any obligation hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under this Agreement. In claims against any person or entity indemnified under this paragraph by an employee of the Consultant, anyone directly or indirectly employed by the Consultant, the agent, subconsultant or independent contractor of any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or said employee, agent, subconsultant, independent contractor or anyone for whose acts any of them may be liable, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts. Notwithstanding any of the

above, to the extent Consultant is complying with a written directive from the Owner, that is not based on the Consultant's recommendation, the Consultant shall not be held liable under the indemnification provisions of this Agreement if the Consultant has promptly disagreed with the written directive by delivering such objection to the Owner in writing.

2. The Owner and the Consultant waive all rights against each other and against the contractors, subcontractors, subconsultants, agents and employees of the other for damages, but only to the extent covered by the Owner's Builder's Risk Policy concerning damage to the Work during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions. The Owner and the Consultant each shall require similar waivers from their contractors, subcontractors, subconsultants and agents.

E. LIMITATIONS OF ACTIONS

1. An action by or against the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable, shall comply with and be bound by the applicable and lawful statute of limitation and statute of repose provisions. Notwithstanding this, any action by or against the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable, that is based in contract or warranty shall be commenced within six (6) years of the date of substantial completion of the improvement or abandonment of construction except that such period of limitation shall be modified as follows:
 - a. In the event that the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable has fraudulently concealed the act, error, omission or breach of duty, or the injury, damage or other loss caused by the act, error, omission or breach of duty, the six year period shall not begin to run until such time as the Owner discovers or, through the exercise of reasonable diligence, should have discovered its claim.
 - b. In the event that the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable commits a willful or intentional act, error, omission, or breach of duty, the six year period shall not begin to run until such time as the Owner discovers or, through the exercise of reasonable diligence, should have discovered its claim.
 - c. In the event of an unintentional and nonfraudulent latent act, error, omission or breach of duty, the Owner shall have the time period allowed by Utah law and the Utah Code, unless a longer period is provided for in an attachment to this Agreement.

- d. These provisions are understood and agreed to by the Consultant as establishing a "different period of limitations" as that term is used in UCA 78-12-21.5(3)(a) or any other similar statute of the Utah Code. These provisions are not intended to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

F. MISCELLANEOUS PROVISIONS

1. Third Parties. Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against the Owner and/or Consultant or its subconsultants at any tier.
2. Hazardous Materials. Unless otherwise expressly agreed in Attachment "A", the Consultant has no duty to discover, investigate, report, or remediate hazardous materials or toxic substances, including but not limited to those regulated by State or federal authorities, which: (i) may have been used in the construction of pre-existing improvements on the site; (ii) otherwise may be present on the site as of the effective date of this Agreement, or; (iii) which may be used by the Contractor in performing the Work. Subject to these limitations and consistent with the standard of care stated herein, Consultant shall promptly notify Owner of the obvious presence of any such hazardous or toxic materials or substances of which Consultant is or should be aware other than such materials which may be used by the Contractor in performing the Work.
3. Promotional Issues. The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials, provided that the Consultant appropriately gives recognition to the State of Utah regarding the Project. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Consultant in the Owner's promotional materials that relate to the Consultant's work for the Project. Except to the extent related to the Consultant's defense of any statements made by others in regard to the Consultant's performance, and notwithstanding any other provision of this Agreement, the Consultant shall not make any public information release in connection with services performed under this Agreement without the advance written approval of the Director of the Division of Facilities Construction and Management.
4. Binding Issues and Assignment Limitations. This Agreement shall be binding upon the Owner, the Consultant, and their respective partners, employees, agents, joint ventures, successors and assigns. Neither the performance of this Agreement, a right or claim, nor any part thereof including any monies to be paid, may be assigned by the Consultant or Owner without the prior

written consent and approval of the other party. The Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Consultant shall execute all consents reasonably required to facilitate such assignment.

5. Entire Agreement Amendment Limitation. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Consultant.
6. Warranty. The Consultant warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement, except bona fide employees or established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the Owner shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, brokerage, or contingent fee.
7. Consultant Records. The Consultant and its subconsultants shall maintain records of its direct labor hours and overhead cost allocation plan, subconsultant costs and other direct job costs pertaining to any services performed by design phase and by extra services under this Agreement.

The Owner shall have the right to access and audit of records of the Consultant if and as provided in State law and rules. The records related to this Project shall be retained by the Consultant in order to facilitate State of Utah access to such records for a period of three (3) years, or such longer period as required by law, after completion or termination of the work under this Agreement.

8. Notice. Any notice required by this Agreement shall be served upon the recipient's designated representative by hand delivery at the last known business address, or by mail with "delivery confirmation" to the last known address. Notwithstanding any other provision of this Agreement, written notice shall also be deemed to have been duly served by verified use of a FAX system by using the known and operative calling number. Service by use of the FAX system is encouraged when timely notice will benefit the Owner, Consultant, or Contractor. Notice shall be considered complete and verified upon the sending and confirmation of delivery using the FAX system, if on the same day notice is also sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice, confirming the FAX delivery.

9. Right to Complete. Subject to the termination provisions of this Agreement, the Owner shall have the right to complete the work or any portion thereof by itself or others, and to modify and/or use the Consultant's work in part or in its entirety as hereinabove described.
10. Plan Reviews. The Owner's plan checks and/or plan reviews in no way relieve the Consultant of design liability or contractual responsibility under this Agreement.
11. Discrimination and Sexual Harassment Prohibited. Pursuant to the laws of the State of Utah, the Consultant, or any person acting on behalf thereof, will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, ancestry or national origin. To the extent applicable, said persons will comply with all provisions of Executive Order No. 11246 dated September 24, 1965 and rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto. The Consultant, or anyone for whose act the Consultant may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.
12. Compliance with Contract Documents, Reporting Defects and Deficiencies. Site visits shall require the Consultant to examine the Work of the Contractor in progress to assist the Owner in identifying any lack of compliance with the Construction Documents, defects or deficiencies in the Work and to determine whether the Work is proceeding in a manner such that, when completed, will likely be in accordance with the Construction Documents. Except as may otherwise be provided in Attachment "A", the Consultant's on-site construction-phase services are (i) not full-time, continuous, or exhaustive; (ii) do not include a duty to discover latent defects in the Work; and (iii) do not constitute a guarantee of the Contractor's Work or relieve the Contractor of its responsibilities. Consultant is not responsible for the Contractor's selected means, methods, or sequences of work. The Consultant shall cooperate and assist the Owner in enforcement of the Construction Documents. The Consultant shall promptly report known or obvious defects to the Owner. This provision does not relieve the Contractor of its responsibility to comply with the Construction documents.
13. Availability of Funds. The obligations of Owner under this Agreement are subject to, and contingent upon, the availability of funds to Owner. The Notice to Proceed issued by Owner for each phase of the project shall mean that funds are available for that phase of the work.
14. No Requirement to Employ on other Projects. The Owner does not assume any obligation to employ the Consultant's services or pay the Consultant royalties of any type for any other project whatsoever.
15. Waivers. No waiver by the Owner or Consultant of any default shall constitute a waiver of the same default at a later time or of a different default.

G. TERMINATION OR SUSPENSION

1. The Owner or Consultant may terminate this Agreement for cause should the other party fail to substantially perform the material covenants herein contained at the time and in the manner herein provided, including the failure to design the project within the Construction Budget. In such event, the party seeking termination shall give the other party fourteen (14) calendar days written notice of intent to terminate for cause. If the other party cures said default, or is diligently pursuing a cure, within said fourteen (14) day period, there shall be no termination for cause.
2. In the event of such termination for cause by the Owner, the Owner may proceed with the work in any manner deemed proper by the Owner. The cost to the Owner or damage to the Owner as a result of the failure to perform shall be deducted from any sum due the Consultant under this Agreement, and the balance, if any, shall be paid to the Consultant upon demand. If the cost or damage to the Owner exceeds the sums due the Consultant, such costs or damages shall be paid to the Owner by the Consultant.
3. In the event of such termination for cause by the Consultant, the Consultant shall be paid all sums owing Consultant through the date of termination. Under no circumstances, shall Consultant be paid for any other sums related to the termination for cause, including but not limited to, lost profits or consequential damages.
4. The Owner reserves the right to terminate this Agreement for convenience or any reason upon fourteen (14) calendar days written notice to Consultant. In such event, the Consultant shall be paid all sums owing Consultant through the date of termination. Under no circumstances, shall Consultant be paid for any other sums related to the termination for convenience, including but not limited to, lost profits or consequential damages.
5. If the Consultant transacts business as a sole proprietorship, the Consultant's death or incapacity shall automatically terminate this Agreement as of the date of such event. Under these circumstances, neither the Consultant nor the Consultant's estate shall have any further right to perform hereunder and the Owner shall pay the Consultant or the estate shall be paid through the date of termination.
6. Promptly after termination and payment of any sums owing the Consultant, the Consultant shall deliver all of the Deliverable Instruments of Services, including those in progress, to the Owner as hereinbefore described.

ARTICLE IV.
SCOPE OF SERVICES AND OTHER SPECIAL
TERMS AND CONDITIONS, AND ADDITIONAL SERVICES

- A. DOCUMENTS. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement comprises the documents listed below which are all hereby incorporated by reference herein:
1. This Agreement Between Owner and Consultant;
 2. The solicitation documents for this Project issued by the Owner;
 3. General Conditions, Design Criteria and CAD Criteria on file with the Owner and the current edition as of the date of this Agreement; and
 4. The Attachments to this Agreement.
- B. Additional Services; In General. Notwithstanding any provision of this Agreement, the Consultant shall not be entitled to any additional compensation or the considering of any work as an additional service when such work is being performed in order to resolve an error or omission of the Consultant or is otherwise required to meet the terms of this Agreement. The Consultant shall perform additional services when authorized by a written modification to this Agreement in advance of the performance of the subject work. Failure of the Consultant to obtain a written approval from the Owner of the cost and authorization to proceed shall result in the Consultant's forfeiture of the right to seek additional compensation for the contended additional service. Consultant shall have no obligation, and shall not, begin or provide any additional services unless and until such written modification has been provided by the Owner. Examples of what may be considered additional services, if approved by the Owner in advance and in writing, include, but are not limited to, the following:
1. Revise the Contract Documents and previously approved Schematic Design and Design Development documents to accommodate changes requested by the Owner, excluding corrections of errors, and omissions by the Consultant.
 2. Prepare change order documents for revisions and changes when requested by the Owner, excluding corrections of errors and omissions by the Consultant, after a Construction contract has been awarded.
 3. Prepare measured drawings of existing structures except as required for planning Project additions or alterations thereto.
 4. Select movable furniture, equipment, or other articles which are not otherwise included in the Construction Contract or required by the Scope of Consultant's Basic Services.

5. Provide additional services necessary to correct defects in, or damages to, the Project, excluding corrections arising from the errors and omissions of the Consultant.
6. Provide additional services caused by the breach, default, delinquency or insolvency of the Contractor.
7. Consultant shall upon Owner's written directive incorporate one or more additive alternates into its design documents. Alternates are to be utilized to allow for the design team to meet the agreed to construction budget. There shall be no deductive alternates.
8. Site visits for construction observation or other purposes related to the Project beyond those specified in this Agreement, except when necessary due to the Consultant's errors and omission. All site visits under this category must be authorized in advance by the Owner.
9. Assist the Owner in defending any claim or action related to or arising out of the Consultant's design, not attributable to errors, omissions, or negligence on the part of the Consultant, of the project brought by a Construction Contractor or any other party.
10. If requested by the Owner, the Consultant shall furnish services concerning replacement of a part or all of the Project damaged during construction.
11. If requested by the Owner, the Consultant shall provide special surveys, environmental studies, and submissions required for approvals of the Owner or others having jurisdiction over the project.
12. Providing additional resources beyond those that could have been reasonably contemplated at the time of entering this Agreement and are reasonably necessary to timely meet its obligations under the Agreement due to facts, events or circumstances beyond its control.
13. If provided for in an Attachment hereto, the Consultant shall provide inspection services for the Project during construction or as otherwise specified in the Attachment.

C. COST PROPOSAL FOR ADDITIONAL SERVICES.

The Consultant has the responsibility to assist the Owner in accomplishing the project within the established budget. The Consultant shall submit a cost proposal for any work it considers additional services, within ten (10) calendar days of receipt by Consultant's Representative of a written request from the Owner's Representative. If no cost proposal is submitted within ten (10) calendar days, the Consultant shall perform the work at no additional cost to the Owner. This ten (10)

calendar day period may be extended by the Owner upon submission of a written request by Consultant within said ten (10) day period with sufficient justification for the extension. The Owner's approval of the extension will not be unreasonably withheld. The Schedule of Consultant's and Subconsultant Fees (Attachment "A"), which is deemed to include all salaries, overhead, benefits, administrative costs and profit, shall be utilized for establishing the fee for Additional Services. The Consultant shall have no authority or duty to perform Additional Services unless authorized in advance and in writing by the Owner's Representative.

**ARTICLE V.
COMPENSATION, PAYMENTS
TO THE CONSULTANT, AND DAMAGES**

- A. The consideration to be paid the Consultant, as provided herein, shall be in full and complete compensation for all the Consultant's services and expenses incurred in the performance of this Agreement. Invoices shall include the Owner project and contract number, and be signed by the Consultant.
- B. Payment shall be in accordance with the schedule of lump sum payments for each phase listed under this Agreement as shown in the Schedule of Consultant's and Subconsultant Fees (Attachment "A"). Progress payments with respect to such lump sum amounts shall be based upon percentage of such services completed.
- C. Except for Owner approved additional services described in properly executed written amendment to this Agreement or other adjustments to Consultant's compensation that the Consultant is entitled to under this Agreement, the total compensation payable under the terms of this Agreement shall not exceed the sum identified in the Schedule of Consultant's and Subconsultant's Fees (Attachment "A").
- D. The Owner shall make payments due under this Agreement directly to the Consultant. To the extent the Consultant has not performed in accordance with this Agreement, the Consultant shall not be entitled to compensation and the Owner may withhold an appropriate portion of the payment to the Consultant. In addition to any other requirements under this Agreement, the following is required before any payment shall be made and/or deemed owed by the Owner:
 - 1. The Consultant shall submit invoices for progress payments not more than once a month. Each invoice shall include a detailed description by line item showing the contract prices, percentage of the services completed for the period, payments received to date, payment requested for the period, the overall percentage of completion, any lien waivers or releases previously requested by Owner;
 - 2. The Owner may, at its discretion, adjust any progress payments so that it corresponds to the percentage of completion as estimated by the Owner. Notice shall be given to the Consultant prior to making any such adjustments;

3. Notwithstanding anything to the contrary contained in this Agreement, the Owner may withhold any payment to the Consultant hereunder if and for so long as the Consultant fails to perform any of its obligations hereunder or otherwise is in default under this Agreement; provided that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Consultant.
- E. The acceptance by the Consultant of final payment without a contemporaneous written protest shall release the Owner, from all claims and all liability to the Consultant for fees and costs of the performance of the services pursuant to this Agreement.
- F. Should the Consultant fail to complete the services of this Agreement within the time established by the Project Schedule (Attachment "A"), the Consultant shall be liable to the Owner for the actual damages incurred and such amount, may be deducted from any amount due or that may become due the Consultant. To the extent that the damages exceed any amount that would otherwise be due the Consultant, the Consultant shall be liable for such excess to the Owner. The Owner may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. Notwithstanding the above, the Owner agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultants control.

ARTICLE VI. SPECIALIZED PROCUREMENT SYSTEMS

The Consultant understands that the selection of the Consultant and/or Contractor for the services and work of this Project may have been undertaken pursuant to an information or value-based procurement system. The Consultant agrees to cooperate with the Owner and any agent of the Owner that facilitates the use of the Owner's procurement system either on this project or for any other project of the Owner.

ARTICLE VII. EXECUTION

The Consultant and Owner each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT ON THE DAY AND YEAR FIRST WRITTEN ABOVE.

CONSULTANT: _____

Signature Date

Title:

State of _____)

County of _____)

Please type/print name clearly

On this _____ day of _____, 20____, personally appeared before me, _____, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the _____ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

(SEAL)

Notary Public

My Commission Expires _____

APPROVED AS TO AVAILABILITY
OF FUNDS:

OWNER: DIVISION OF FACILITIES
CONSTRUCTION & MANAGEMENT

Financial Manager, Date
DFCM

Manager – Capital _____ Date

APPROVED AS TO FORM:
June 28, 2004
By: ALAN S. BACHMAN
Asst. Attorney General

APPROVED FOR EXPENDITURE:

Division of Finance Date

AGREEMENT BETWEEN OWNER AND CONSULTANT

Attachment "A"

1. Basic Services Fee: \$_____. Construction Budget: \$_____
(See attached schedule of Consultant's and sub-consultant's fees for further breakdown). The following services are provided in the basic schedule of fees. Architectural, mechanical, electrical, structural, civil, landscape and acoustic design as required for the project. Value Engineering Session participation. Meeting minute production and distribution. Cost estimating. Fire/water flow analysis. Plan reviews with the Building Official, the Fire Marshall and the Health Department. Construction Procurement Phase services. Travel as outlined in Item 3. Printing as outlined in Item 4. Construction Period services as outlined in Item 5.

The Basic Services Fee is divided into the following percentages for the different phases of Work: schematic design - 15%; design development - 20%; construction documents - 40%; bidding - 5%; and construction closeout/warranty period - 20%.

Exceptions to this list of services are:

2. The following additional services will be provided as described and at the listed fee:
3. Travel reimbursement included in this Agreement:
4. Printing requirements. Printing for the use of the design team for coordination and presentations is included in the base fee:
5. Construction Period site visits:
6. Additional requirements above those stated for additional insurance requirements, hazardous material requirements, special inspection services as described and at the listed fee:
7. Required project milestones and Consultants project schedule. (See attached schedule of Consultants work plan)
Design complete ready for bidding:
Construction complete and ready for occupancy permit:
8. **Total Fee for Agreement:** \$_____.

Attachment "B"

Any Portion(s) of the Consultants response to the Owner's solicitation which is to be part of the agreement is identified below: